



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	06/20/01	Bill No:	SB 394
Tax:	Internet	Author:	Sher & J. Campbell
Board Position:	Support	Related Bills:	AB 228 (J. Campbell)

BILL SUMMARY

This bill would extend California's Internet Tax Freedom Act for an additional two years - until January 1, 2004.

ANALYSIS

Current Law

State law: Part 32 (commencing with section 65001) of Division 2 of the Revenue and Taxation Code was added by AB 1614 (Ch. 351, Stats. 1998) to create the "California Internet Tax Freedom Act." Subdivision (h) of section 65002 states the legislative intent that no existing or future state taxes or state fees be imposed by the state in a discriminatory manner upon Internet access or online computer services.

Subdivision (a) of section 65004 specifies that for the period January 1, 1999 through January 1, 2002, no local government may impose, assess, or attempt to collect any tax or fee on: 1) Internet access, online computer services, or the use of either; 2) a bit tax or bandwidth tax; or 3) any discriminatory tax on Internet access or online computer services. Subdivision (b) of section 65004 provides that this prohibition does not include any new or existing tax of general application, including but not limited to any sales and use tax, business license tax, or utility user tax that is imposed or assessed in a uniform and nondiscriminatory manner, as specified.

Federal law: Under Title XI and XII of the Omnibus Appropriations Act of 1998, approved as H.R. 4328 by Congress on October 20, 1998 and signed as Public Law 105-277 on October 21, 1998, the federal "Internet Tax Freedom Act" was created to do the following:

- Prohibit state and local governments from taxing Internet access from October 1, 1998 until October 21, 2001.
- Prohibit state and local governments from imposing taxes that would subject buyers and sellers of electronic commerce to taxation in multiple states and protect against the imposition of new tax liability for consumers and vendors involved in commercial transactions over the Internet, including the application of discriminatory tax collection requirements imposed on out-of-state businesses through strained interpretations of "nexus."

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

- Establish a commission to study electronic commerce tax issues and report back to Congress after 18 months on whether electronic commerce should be taxed, and if so, how such commerce can be taxed in a manner that ensures that it will not be subject to special, multiple, or discriminatory taxes.
- Specify that it is the Sense of Congress that there should be no federal taxes on Internet access or electronic commerce.
- Declare that the Internet should be a tariff-free zone.

Proposed Law

This bill would amend subdivision (d) of Section 65004 of the Revenue and Taxation Code to extend the Internet Tax Freedom Act by providing that Part 32 of Division 2 of the Revenue and Taxation Code shall remain in effect until January 1, 2004, and as of that date is repealed.

The bill would become operative January 1, 2002.

Background

A similar measure was considered during the 2000 Legislative Session. That measure, AB 1784 (Lempert, et al.) was enacted into law (Chapter 618). However, the bill never became operative because the bill also contained an uncodified section that provided that AB 1784 would only become operative if Assembly Bill 2412 was enacted and became effective on or before January 1, 2001. Since Assembly Bill 2412 was vetoed by the Governor, the provisions of AB 1784 never became operative. (Assembly Bill 2412, Migden and Aroner, would have required certain out-of-state dot-com retailers to collect the applicable use tax if they were related to a substantially similar retailer operating in California, as specified.)

COMMENTS

1. **Sponsor and purpose.** The measure is sponsored by the author and is intended to continue a responsible tax policy regarding the taxation of the Internet so as to avoid any potential burdens placed on this evolving medium.
2. **The June 20, 2001 amendments delete the provisions requiring a study.** The amendments delete the requirement that would have required the Legislative Analyst to prepare a report reviewing California's telecommunications levies.
3. **The May 1, 2001 amendments change the sunset date to January 1, 2004.** Prior to this amendment, the bill would have specified that the California Internet Tax Freedom Act would remain in effect until January 1, 2007.

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4. **There is pending federal legislation to also extend the federal Internet Tax Freedom Act.** Several bills pertaining to Federal Internet taxation have been introduced in Congress before to either make the federal moratorium permanent, or to extend it. These include: S. 245, S. 246, and S. 589 (Robert Smith), S. 288 (Wyden and Leahy), S. 512 (Dorgan, et al.), S. 777 (Allen & Burns), H.R. 1410 (Istook, et al.), HR 1552 (Cox, et al.) and HR 1675 (Cox).
5. **Board supported both federal and state legislation.** The Board unanimously supported the 1998 federal "Internet Tax Freedom Act" as well as California's Internet Tax Freedom Act of 1998.
6. **Related legislation.** A similar measure to extend California's Internet Tax Freedom Act has also been introduced. That measure, AB 228 (J. Campbell), would extend the Act for an additional *three* years.

COST ESTIMATE

Enactment of this measure would not have any impact on the Board's administrative costs.

REVENUE ESTIMATE

Enactment of this measure would have no impact on the State's or local jurisdictions' sales and use tax revenues nor would it impact the revenues derived from the imposition of the Emergency Telephone Users Surcharge or any other fee or tax administered by the Board.

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